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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,585	06/26/2000	Scott R. Brundage	005950-544	3095

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EXAMINER

MCAVOY, ELLEN M

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 06/28/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/603,585

Applicant(s)

BRUNDAGE ET AL.

Examiner

Ellen M McAvoy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 23-35 and 39-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 23-35 and 39-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 23-35 and 39-51 are still rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup et al (5,288,393), (5,593,567), (5,653,866) or (5,837,126); in view of the CARB Properties and Specifications for Phase 3 Reformulated Gasoline set forth in the specification on page 7.

Applicants' arguments filed April 12, 2002 have been fully considered but they are not persuasive. As set forth in the previous office action, the Jessup references teach that by controlling one or more properties of a gasoline fuel suitable for combustion in automobiles, the emissions of NO_x, CO and/or hydrocarbons can be reduced. The gasoline properties which can be controlled include Reid Vapor Pressure, the 50% and 90% D-86 distillation points, olefin content, paraffin content, octane number and aromatic content. Specifically, a Reid Vapor Pressure max. range of 9.0-15.0 psi is set forth in Table 1 in col. 5 of Jessup '393. The prior art references teach that a less polluting gasoline fuel can easily be prepared in a petroleum refinery by blending the hydrocarbon stocks so as to produce gasolines of specified Reid Vapor Pressure, olefin content, etc., in light of the mathematical equations provided by Jessup such that the amount of pollutants emitted upon combustion are reduced. The equations for carbon monoxide (CO) in gm/mile, NO_x in gm/mile and hydrocarbons (HC) in gram/mile are set forth in col. 5.

The examiner maintains the position that the method of claim 1 of blending unleaded gasoline fuels which are substantially free of oxygenates and which have a Reid vapor pressure of 7-15 psi comprising the steps of blending and controlling gasoline blending streams such that the blended unleaded gasoline products are in compliance with the California Phase 3 Predictive Model is encompassed by the Jessup references. Although Jessup does not teach gasolines essentially free of oxygenates as required by the claims, Jessup '393 includes examples of gasoline blends in Table 2 wherein several blends include 0.0 volume % of the oxygenate MTBE. The examiner is of the position that the blends in this table having Reid Vapor Pressure valued between about 7.0 and 15.0 and having 0.0 volume % MTBE are the closest prior art gasoline blends which meet the limitations of the claims. As set forth in the specification, The California Phase 3 Predictive Model is comprised of 12 mathematical equations which estimate the relative amount of exhaust emissions of hydrocarbons, nitrogen oxides and four toxic air contaminants. Although the Jessup references do not disclose equations for predicting toxic air contaminants, the examiner maintains the position that the method of blending hydrocarbon gasoline streams based on predictive equations of exhaust emissions is taught by the prior art.

Applicants argue that while the Jessup references disclose controlling certain properties of a gasoline fuel in order to lower emissions, the patents fail to disclose or suggest controlling the amount of sulfur such that it is less than 10 ppmw as now recited by amended claim 1. The examiner is of the position that since the California regulations for Phase 3 reformulated gasolines **require** a flat limit of 20 ppmw sulfur and **require** an average limit of 15 ppmw sulfur,

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it would have been obvious to the skilled gasoline formulator to limit the amount of sulfur in reformulated gasolines to this requirement.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-19, 23-35 and 59-51 are also still rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 20-35, 39-54 and 58-71 of copending Application No. 09/603,556. Although the conflicting claims are not identical, they are not patentably distinct from each other because the method of blending unleaded gasolines which are essentially free of oxygenated compounds such as ether compounds may be the same when the California Predictive Model of the claims is the California Phase 3 Predictive Model.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

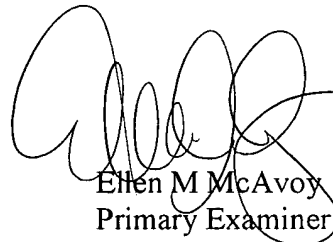
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ellen M McAvoy whose telephone number is (703) 308-2510. The examiner can normally be reached on M-F (7:30-5:00) with alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knode can be reached on (703) 308-4311. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Ellen M McAvoy
Primary Examiner
Art Unit 1764

EMcAvoy
June 26, 2002